

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL No.: 17-CR-518
Plaintiff,	:	HONORABLE JUAN R. SANCHEZ
	:	
v.	:	(JRS)
	:	
BRYANT CALLOWAY	:	
SEAN GILLIAM	:	
SEAN WILSON	:	
TONIE HENDERSON	:	
TYREE JOHNSON	:	

[DEFENDANT[s] MOTION THE COURT FOR THE
DISQUALIFICATION OF ASSISTANT UNITED STATES
ATTORNEY JONATHAN B. ORTIZ OR IN THE ALTERNATIVE RECUSAL
FROM CRIMINAL CASE No.: 17-518]

INTRODUCTION

The Defendant(s) Bryant Calloway, Sean Gilliam, Sean Wilson, Tonie Henderson and Tyree Johnson, Respectfully moves this Court to disqualify or in the alternative ask for the recusal of Assistant United States Attorney Jonathan B. Ortiz, on the basis of a substantial conflict of interest that has developed which requires Mr. Ortiz to be called as a witness in any further pretrial evidentiary hearings and in the Defendant(s) subsequent trial.

The Advocate-Witness Rule prohibits an attorney from appearing as both a witness and an advocate in the same litigation. This venerable rule is a necessary corollary to the more fundamental tenet of the American Adversarial system that juries are to ground their decisions on the facts of a case and not on the integrity or credibility of the advocates.

FACTS

POINT (1.)

In support of the Defendant(s) request for disqualification of United States Attorney Jonathan B. Ortiz, the Defendant(s) avers the following:

— On January 12, 2018 the Defendant(s) received evidence in the form of a motion by the Federal Government requesting a Transfer of the Confidential Source Raymond Thompson to be brought to local custody in the State of Commonwealth Pennsylvania for a preliminary hearing of Christian D. Brown, in which Mr. Raymond Thompson shall testify as a witness.

Within this motion the Federal Government [Yvonne O. Osirim] stated that Mr. Raymond Thompson was indicted by a Federal Grand Jury on June 21, 2017 with making false statements to law enforcement, in violation of 18 U.S.C. Sect. 1001 (a)(2). [See., Attached, Hereto, Exhibit (A) Federal Government Motion/Raymond Thompson Docket].

POINT (2.)

On July 14, 2017 a notice of Attorney appearance by Assistant United States Attorney Jonathan B. Ortiz was made in which Mr. Ortiz appeared for the Federal Government in the prosecution of Raymond Thompson. [See., Supra, Exhibit (A) Docket Entry [7] Raymond Thompson Docket],

Assistant United States Attorney Mr. Jonathan B. Ortiz is the lead Government Attorney in United States criminal case, Criminal No.: 17-518 (JRS). In which Mr. Ortiz main witness against the defendant(s) in this particular case is the Confidential Source Raymond Thompson. Who is also being prosecuted by Mr. Ortiz for making false statements to law enforcement in violation of 18 U.S.C. Sect. 1001 (a)(2).

In the need for Judicial Transparency and to develop the record for appellate purposes, the Defendant(s) believes it is necessary to call Assistant United States Attorney Jonathan B. Ortiz as a witness to shed light on the veracity and basis of knowledge as it relates to the truthfulness and reliability of CS-1 Raymond Thompson statements. These statements being material to the probable cause determination for Defendant(s) arrest, search and seizure on September 27, 2017. Approximately 98 days after the same prosecution who indicted Raymond Thompson for lying to law enforcement, uses Mr. Raymond Thompson statements incriminating defendant(s) as the linchpin in their probable cause determinations.

Assistant United States Attorney Mr. Jonathan B. Ortiz will be called to testify by the defense in all further evidentiary pre-trial hearings and ultimately trial proceedings if necessary.

Point (3.)

In addition to the above stated, due to the fact that the Defendant(s) defense to the current charges largely rest on discrediting the truthfulness of Raymond Thompson and all evidence flowing thereof, as well as from Detective Ronald Dove who was indicted in the Commonwealth of Pennsylvania in or about November 2013 for Obstructing the administration of justice, conspiracy and other related offenses in a related homicide investigation; Defendant(s) intend to call Assistant United States Attorney Jonathan B. Ortiz to shed light not only on Raymond Thompson propensity to lie and make false statements to law enforcement, but also to bring light to the United States Attorney office policies with respect to an unreliable informant who has been indicted for lying to law enforcement.

Mr. Ortiz will also be able to provide the Court with first hand knowledge on how he accepted evidence being removed from the Commonwealth of Pennsylvania Jurisdiction and into Federal Jurisdiction when this said evidence and tainted informant Raymond

is directly derived from a corrupt Official in Detective Ronald Dove. [See., Attached, Hereto, Exhibit (B) Press Conference on Detective Ronald Dove].

LEGAL ARGUMENT

Regardless of the prosecutor view of the utility of his own testimony, the district Judge is charged with the responsibility of making determinations as to the materiality of a witness testimony. In so doing, the Court must honor the Defendant(s) Constitutional rights under the confrontation clause of the Sixth Amendment. The unequivocal admonition of the Supreme Court on this point bears repetition here:

The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the system depend on full disclosure of all relevant facts, within the framework of the rules of evidence.

To ensure that justice is done, it is imperative to function of Courts that the Confrontation and Compulsory process be available for the production of evidence needed by the defense or the prosecution. [United States v. Nixon, 418 U.S. 683, 709, 41 L. Ed. 2d 1039, 94 S.Ct. 3090 (1974)].

Although Courts have generally disfavored allowing a participating prosecutor to testify, there is no absolute bar to calling him/her as a witness. [United States v. West, 680 F.2d 652, 654 (9th Cir. 1982)]. Compelling and legitimate need for prosecutor testimony. [Birdman, 602 F.2d at 552: U.S. v. Regan, 103 F. 3d 1072, (2d Cir. 1997)].

The "Compelling Need" for the testimony of Assistant United States Attorney Jonathan B. Ortiz is both material and relevant. No one is better suited to put the facts objectively before the Court and possible Jury with reference to Raymond Thompson and Detective Ronald Dove than Mr. Ortiz.

Mr. Ortiz is responsible for the prosecution of Raymond Thompson for making false statements to law enforcement and charging him with 18 U.S.C. Sect. 1001 (a)(2) and securing an indictment. Also Mr. Ortiz is also the lead Federal Attorney on this case that used tainted evidence from a criminally corrupt official in the substantial basis of the affidavit which accompanied the search and seizure warrants, and the introduction of that evidence into Federal Jurisdiction all together.

Therefor Mr. Ortiz testimony is compelling and legitimate, just as the standard requires. [United States v. Regan, 103 F.d 1072, 1083 (2d Cir. 1997) (citing United States v. Schwartzbaum, 527 F.2d 249, 253 (2d Cir.1975)].

Where the prosecutors appearance as witness is unavoidable... the prosecutor should withdraw from participation in the trial. [U.S. v. Regan, 103 F.3d 1072, (2nd Cir. 1997), Birdman, 602 F. 2d at 553-54.].

The Defendant seeks the Court's assistance in preserving the distinctions the Advocate-Witness rule was intended to uphold while affording the Defendant access to perhaps the most important witness to creditability and truthfulness of the Confidential Source Raymond Thompson who is by far the linchpin in the case of United States v. Bryant Calloway, Sean Gillian, Sean Wilson, Tonie Henderson, and Tyree Johnson.

CONCLUSION

In conclusion the defense pray on the mercy of the Courts to compel the disqualification of Assistant United States Attorney Jonathan B. Ortiz from all further proceedings in the case of United States v. Bryant Calloway, Sean Gillian, Sean Wilson, Tonie Henderson and Tyree Johnson, or in the alternative to recuse Mr. Otiz from the case all together.

Date:

Respectfully Submitted

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CRIMINAL DOCKET FOR CASE #: 2:17-cr-00325-CDJ All Defendants**

Case title: USA v. THOMPSON

Date Filed: 06/21/2017

Assigned to: HONORABLE C. DARNELL
JONES, II

Defendant (1)**RAYMOND THOMPSON**

represented by **KATHLEEN M. GAUGHAN**
FEDERAL DEFENDERS OFFICE
601 WALNUT STREET
SUITE 540
PHILADELPHIA, PA 19106
215-928-1100
Email: kathleen_gaughan@fd.org
TERMINATED: 07/17/2017
LEAD ATTORNEY
Designation: Public Defender or
Community Defender Appointment

MARK T. WILSON
DEFENDER ASSOCIATION OF
PHILADELPHIA
SUITE 540 W, THE CURTIS CENTER
601 WALNUT STREET
PHILADELPHIA, PA 19106
215-928-1100
Fax: 215-928-1112
Email: mark_wilson@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Public Defender or
Community Defender Appointment

Pending Counts

18:1001(a)(2) FALSE STATEMENTS TO
LAW ENFORCEMENT
(1)

Disposition**Highest Offense Level (Opening)**

Felony

Terminated Counts

None

Disposition**Highest Offense Level (Terminated)**

None

Complaints

None

Disposition**Plaintiff**

USA

represented by **YVONNE O. OSIRIM**
 U.S. ATTORNEY'S OFFICE
 615 CHESTNUT ST
 PHILADELPHIA, PA 19106
 215-861-8207
 Email: yvonne.osirim@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

JONATHAN B. ORTIZ
 U.S. ATTORNEY'S OFFICE
 615 CHESTNUT ST SUITE 1250
 PHILADELPHIA, PA 19106
 215-861-8305
 Email: jonathan.ortiz2@usdoj.gov
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
06/21/2017	<u>1</u>	SEALED INDICTMENT as to RAYMOND THOMPSON (1) count(s) 1. (Attachments: # <u>1</u> Designation Form) (tj,) (Entered: 06/21/2017)
06/21/2017	<u>2</u>	MOTION AND ORDER TO SEAL INDICTMENT AS TO RAYMOND THOMPSON.. Signed by MAGISTRATE JUDGE THOMAS J. RUETER on 6/21/17.6/21/17 Entered. (tj,) (Entered: 06/21/2017)
06/21/2017	<u>3</u>	MOTION AND ORDER FOR ISSUANCE OF BENCH WARRANT AS TO RAYMOND THOMPSON. Signed by MAGISTRATE JUDGE THOMAS J. RUETER on 6/21/17.6/21/17 Entered. (tj,) (Entered: 06/21/2017)
06/28/2017	<u>4</u>	PETITION AND ORDER BY USA FOR AD PROSEQUENDUM IN CASE AS TO RAYMOND THOMPSON THAT THE WARDEN OF CFCF AND THE USM(S) FOR THE EDPA SHALL PRODUCE THE DEFT ON THURSDAY, 7/13/2017, FOR AN INITIAL APPEARANCE BEFORE THE MAGISTRATE JUDGE ON AN INDICTMENT ON THURSDAY, 7/13/2017, ETC.. Signed by HONORABLE C. DARNELL JONES, II on 6/28/2017.6/28/2017 Entered and Copies E-Mailed. (tomg,) (Entered: 06/28/2017)
07/13/2017	<u>5</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE DAVID R. STRAWBRIDGE: IA/AC as to RAYMOND THOMPSON held on 7/13/2017. This matter is continued for Friday, 7/14/2017 before Judge Reuter at 1:30 p.m., in Courtroom 5A. Signed by United States Magistrate Judge David R. Strawbridge. Court Reporter: ESR. (tomg,) (Entered: 07/14/2017)
07/14/2017	<u>6</u>	Letter from AUSA Unsealing Indictment as to RAYMOND THOMPSON (tomg,)

		(Entered: 07/14/2017)
07/14/2017		***INDICTMENT UNSEALED as to RAYMOND THOMPSON (tomg,) (Entered: 07/14/2017)
07/14/2017	<u>7</u>	NOTICE OF ATTORNEY APPEARANCE JONATHAN B. ORTIZ appearing for USA. (ORTIZ, JONATHAN) (Entered: 07/14/2017)
07/14/2017	<u>8</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE THOMAS J. RUETER: IA/AC/ARR/PTD as to RAYMOND THOMPSON (1) Count 1 held on 7/14/2017. The Govt and defense have agreed to conditions of release. See attached conditions of release order. Plea entered by RAYMOND THOMPSON: Not Guilty on all counts. Counsel have 14 days to file pretrial motions. Signed by United States Magistrate Judge Thomas J. Rueter. Court Reporter: ESR.(tomg,) (Entered: 07/14/2017)
07/14/2017	<u>9</u>	CJA 23 Financial Affidavit by RAYMOND THOMPSON (tomg,) (Entered: 07/14/2017)
07/14/2017	<u>10</u>	ORDER SETTING CONDITIONS OF RELEASE AS TO RAYMOND THOMPSON (1) THAT THE DEFT IS RELEASED ON BAIL IN THE AMOUNT OF \$15,000 O/R WITH THE FOLLOWING CONDITIONS AS OUTLINED HEREIN. Signed by MAGISTRATE JUDGE THOMAS J. RUETER on 7/14/2017.7/14/2017 Entered and Copies E-Mailed. (tomg,) (Entered: 07/14/2017)
07/14/2017		O/R Bond Entered as to RAYMOND THOMPSON in amount of \$ 15,000. (tomg,) (Entered: 07/14/2017)
07/17/2017	<u>11</u>	NOTICE OF ATTORNEY APPEARANCE MARK T. WILSON appearing for RAYMOND THOMPSON and <i>Withdrawal of Kathleen M. Gaughan with Certificate of Service</i> (WILSON, MARK) (Entered: 07/17/2017)
07/27/2017	<u>12</u>	ARREST Warrant Returned Executed on 7/12/2017 in case as to RAYMOND THOMPSON. (ems) (Entered: 07/27/2017)
09/07/2017	<u>13</u>	NOTICE OF HEARING as to RAYMOND THOMPSON JURY TRIAL SET FOR 9/19/2017 09:30 AM IN COURTROOM 15B BEFORE HONORABLE C. DARNELL JONES II. (aes,) (Entered: 09/07/2017)
09/11/2017	<u>14</u>	MOTION to Continue <i>Trial, Unopposed</i> by RAYMOND THOMPSON. (WILSON, MARK) (Entered: 09/11/2017)
09/13/2017	<u>15</u>	ORDER AS TO RAYMOND THOMPSON THAT THE DEFT'S UNOPPOSED MOTION TO CONTINUE TRIAL IS GRANTED. TRIAL IN THIS MATTER WILL BE CONTINUED TO A DATE TO BE SET UPON CONSULTATION WITH THE PARTIES. Signed by HONORABLE C. DARNELL JONES, II on 9/12/2017.9/14/2017 Entered and Copies E-Mailed. (tomg,) (Entered: 09/14/2017)
11/21/2017	<u>16</u>	NOTICE OF HEARING as to RAYMOND THOMPSON STATUS CONFERENCE SET FOR 11/28/2017 11:00 AM IN COURTROOM 15B BEFORE HONORABLE C. DARNELL JONES II. (aes,) (Entered: 11/21/2017)
11/28/2017	<u>17</u>	REPORT AND ORDER OF PRETRIAL OFFICER AS TO RAYMOND THOMPSON THAT THE DEFT'S BAIL BE REVOKED AND A BENCH WARRANT BE ISSUED. Signed by HONORABLE C. DARNELL JONES, II on 11/27/2017.11/28/2017 Entered and Copies E-Mailed. (tomg,) Modified on 11/28/2017 (tomg,). (Entered: 11/28/2017)
11/28/2017	<u>18</u>	NOTICE OF HEARING as to RAYMOND THOMPSON JURY TRIAL SET FOR 12/18/2017 01:30 PM IN COURTROOM BEFORE HONORABLE C. DARNELL JONES II. (aes,) (Entered: 11/28/2017)
11/28/2017	<u>19</u>	Minute Entry for proceedings held before HONORABLE C. DARNELL JONES, II in

4/2/2018

United States District Court Eastern District of Pennsylvania

		Courtroom 15B: Status Conference as to RAYMOND THOMPSON held on 11/28/2017. Case status. Deft arrested on 11/22/2017, currently in county custody. Defense counsel to confer with client and report back to Court. Court Reporter: ESR.(tomg,) (Entered: 11/29/2017)
12/01/2017	<u>20</u>	ORDER AS TO RAYMOND THOMPSON THAT THE WARDEN OF THE DETENTION CENTER AND THE U.S. MARSHALS FOR THE E.D. OF PA. PRODUCE BEFORE THIS COURT THE BODY OF DEFT. ON 12/18/17 AT 1:30 P.M. BEFORE THE HONORABLE C. DARNELL JONES II TO APPEAR FOR TRIAL IN THE ABOVE MATTER, ETC. Signed by HONORABLE C. DARNELL JONES, II on 11/28/17.12/1/17 Entered and Copies E-Mailed. (ke) (Entered: 12/01/2017)
12/18/2017	<u>21</u>	ARREST Warrant Returned Executed on 12/13/2017 in case as to RAYMOND THOMPSON. (tomg,) (Entered: 12/18/2017)
12/18/2017	<u>22</u>	NOTICE OF HEARING as to RAYMOND THOMPSON Change of Plea Hearing set for 1/24/2018 01:30 PM in COURTROOM before HONORABLE C. DARNELL JONES II. PLEA DOCUMENTS DUE VIA EMAIL IN WORD FORMAT NO LATER THAN 1/15/18.(aes,) (Entered: 12/18/2017)
12/19/2017	<u>23</u>	Minute Entry for proceedings held before HONORABLE C. DARNELL JONES, II in Courtroom 15B: SPEEDY TRIAL CONTINUANCE as to RAYMOND THOMPSON held on 12/18/2017. Defense oral motion for continuance - need additional time to negotiate non trial disposition. Court - speedy trial colloquy. Deft agrees to continuance. Speedy trial waiver executed. Court - oral motion for continuance is granted. Court Reporter: ESR. (tomg,) (Entered: 12/19/2017)
12/19/2017	<u>24</u>	WAIVER of Speedy Trial by RAYMOND THOMPSON (tomg,) (Entered: 12/19/2017)
12/20/2017	<u>25</u>	Second MOTION to Continue <i>Trial, Unopposed</i> by RAYMOND THOMPSON. (WILSON, MARK) (Entered: 12/20/2017)
12/21/2017	<u>26</u>	ORDER AS TO RAYMOND THOMPSON THAT THE WARDEN OF THE DETENTION CENTER AND THE USM(S) FOR THE EDPA PRODUCE THE DEFT ON WEDNESDAY, 1/24/2018 AT 1:30 P.M., TO APPEAR FOR TRIAL IN THE ABOVE-CAPTIONED MATTER. Signed by HONORABLE C. DARNELL JONES, II on 12/18/2017.12/21/2017 Entered and Copies E-Mailed. (tomg,) (Entered: 12/21/2017)
12/21/2017	<u>27</u>	ORDER AS TO RAYMOND THOMPSON (1) THAT THE DEFT'S SECOND UNOPPOSED MOTION TO CONTINUE TRIAL IS GRANTED. TRIAL IN THIS MATTER WILL BE CONTINUED TO A DATE TO BE SET UPON CONSULTATION WITH THE PARTIES. Signed by HONORABLE C. DARNELL JONES, II on 12/20/2017.12/21/2017 ENTERED AND COPIES E-MAILED.(tomg,) (Entered: 12/21/2017)
01/12/2018	<u>28</u>	MOTION <i>GOVERNMENT'S MOTION FOR TRANSFER OF DEFENDANT TO LOCAL CUSTODY FOR PRELIMINARY HEARING, WITH CERTIFICATE OF SERVICE</i> by USA as to RAYMOND THOMPSON. (OSIRIM, YVONNE) (Entered: 01/12/2018)
01/19/2018	<u>29</u>	AMENDED MOTION FOR TRANSFER OF DEFENDANT TO LOCAL CUSTODY FOR PRELIMINARY HEARING RE: <u>28</u> MOTION , WITH CERTIFICATE OF SERVICE by USA as to RAYMOND THOMPSON. (ORTIZ, JONATHAN) Modified on 1/22/2018 (ap,). (Entered: 01/19/2018)
01/24/2018	<u>30</u>	NOTICE OF HEARING as to RAYMOND THOMPSON Sentencing set for 4/19/2018 10:30 AM in COURTROOM 15B before HONORABLE C. DARNELL JONES II. SENTENCING MEMORANDA DUE VIA EMAIL IN WORD FORMAT NO LATER THAN 4/6/18.(aes,) (Entered: 01/24/2018)